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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,664

10/13/2006

Bob Coyne

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5246

27890

7590

01/21/2011

STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1781

MAIL DATE

DELIVERY MODE

01/21/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/568,664	COYNE ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25,27,28,32-57 and 62 is/are pending in the application.
- 4a) Of the above claim(s) 46-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25,27,28,32-45 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-15-10</u> | 6) <input type="checkbox"/> Other: _____ |

Claims 1-25, 27, 28, 32-45 and 62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification points to a large number of materials that are capable of being used as shell materials at pages 17-20 of the specification but there is no guidance in the specification to select a shell material that is able to prevent, reduce or inhibit heat degradation of the antimicrobial material when heated to a temperature of at least 60C.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 8, 13-16, 18-20, 25, 27-28, 32, 37, 40, 41, 45 and 62
rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative,
under 35 U.S.C. 103(a) as obvious over Morgan (5,204,029) for reasons of
record.

Applicant argues that Morgan does not show a shell with the
properties of the claims. Claim 25 is a claim that depends from claim 1
which requires the shell material to be made from fats. As a claim
dependent from claim 1, one would expect fats to provide the required
properties of the claims.

Claims 1, 4, 8, 9, 11, 13-16, 18-20, 25, 27-28, 32, 37, 39-43 and 45
are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan
(5,204,029) for reasons of record.

Applicant argues that Morgan does not show a shell with the
properties of the claims. Claim 25 is a claim that depends from claim 1
which requires the shell material to be made from fats. As a claim
dependent from claim 1, one would expect fats to provide the required
properties of the claims.

Claims 1-3, 5-10, 21-25, 27, 28, 32, 33 and 37 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan in view of Francis.

Applicant argues that Morgan does not show a shell with the properties of the claims. Claim 25 is a claim that depends from claim 1 which requires the shell material to be made from fats. As a claim dependent from claim 1, one would expect fats to provide the required properties of the claims.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan as applied to the claims above, and further in view of Amankonah (5,516,543) for reasons of record.

Applicant argues that Morgan does not show a shell with the properties of the claims. Claim 25 is a claim that depends from claim 1 which requires the shell material to be made from fats. As a claim dependent from claim 1, one would expect fats to provide the required properties of the claims.

Claims 1, 9, 12, 17, 25, 27, 28 and 37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Berggren (0687417).

Berggren discloses inhibition of bacterial growth in meat products with an encapsulated product in particulate form comprising capsules containing acetic acid with fat (abstract). The melting point of the fat is stated to fall within the range of the claims (page 3, lines 1-7). The encapsulated product is added to ham with brine, which examiner takes to be a marinade in example 1.

Applicant argues that Berggren does not show a shell with the properties of the claims. Claim 25 is a claim that depends from claim 1 which requires the shell material to be made from fats. As a claim dependent from claim 1, one would expect fats to provide the required properties of the claims.

Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berggren (0687417) for reasons of record.

Applicant argues that Berggren does not show a shell with the properties of the claims. Claim 25 is a claim that depends from claim 1 which requires the shell material to be made from fats. As a claim dependent from claim 1, one would expect fats to provide the required properties of the claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781

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Art Unit: 1781

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